

**IN THE UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

MICHAEL FAVATA, ET AL,

Plaintiffs

v.

NATIONAL OILWELL VARCO, L.P.,

aka/fka BRANDT NOV

Defendant.

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CIVIL ACTION NO. 2:12-CV-00082

DEFENDANT’S RULE 50 MOTIONS FOR JUDGMENT AS A MATTER OF LAW

NOV files the following Rule 50 Motions for Judgment as a Matter of Law:

I. *Two-Man Jobs*

Pursuant to Rule 50, NOV moves for judgment as a matter of law on Plaintiffs’ claim for a half-hour of compensation for time spent in mandatory safety meetings on days in which Plaintiffs recorded 12.0 hours for a two-man jobs because there is no legally sufficient evidentiary basis upon which a reasonable jury could find for the Plaintiffs. The evidence shows that not every rig had a mandatory safety meeting, not every Plaintiff attended safety meetings, and that Plaintiffs often recorded time for safety meetings. Plaintiffs also argued a change in policy but failed to prove or specify when or how the change impacted the claim.

GRANT: _____ DENY: _____

II. *One-Man Jobs*

Pursuant to Rule 50, NOV moves for judgment as a matter of law on Plaintiffs’ claims for 24 hours of compensation on days in which Plaintiffs recorded 16.0 hours for a one-man job because there is no legally sufficient evidentiary basis upon which a reasonable jury could find for the Plaintiffs. Plaintiffs have admitted that some days where they wrote down 16 hours on their timesheet, they did not actually work 24 hours a day. Further, the evidence shows that Plaintiffs would often sleep at night and not be actually working 24 hours a day.

GRANT: _____ DENY: _____

III. Agreement

Pursuant to Rule 50, NOV moves for judgment as a matter of law on the existence of an agreement between NOV and the Plaintiffs that governed overtime compensation. There is no legally sufficient evidentiary basis upon which a reasonable jury could find otherwise, and any instructions by certain supervisors contrary to the agreement do not negate the existence of an agreement.

GRANT: _____ DENY: _____

IV. Damages

Pursuant to Rule 50, NOV moves for judgment as a matter of law that is no legally sufficient evidentiary basis to determine damages for one-man jobs and safety meetings. The evidence is legally insufficient to determine which rigs had safety meetings, when they had them, and whether Plaintiffs were allowed that time on their timesheets. Further, Plaintiffs have admitted that some days where they wrote down 16 hours on their timesheet, they did not actually work 24 hours (*i.e.*, when the rig was tripping pipe, stuck in the hole, or running casing). Therefore, Plaintiffs have provided legally insufficient evidence for the jury to determine when Plaintiffs may have been actually working 24 hours day and whether Plaintiffs were allowed that time on their timesheets.

Further, Plaintiffs have provided legally insufficient evidence to determine damages because Plaintiffs used the incorrect wage rate in calculating damages.

GRANT: _____ DENY: _____

V. Willfulness

Pursuant to Rule 50, NOV moves for judgment as a matter of law that NOV's pay practice at issue was not a willful violation of the FLSA because there is no legally sufficient evidentiary basis upon which a reasonable jury could find otherwise. Plaintiffs have provided no evidence to suggest that NOV's actions were deliberate, intentional, and voluntary.

GRANT: _____ DENY: _____

VI. DOL Waiver

Pursuant to Rule 50, NOV moves for judgment as a matter of law that Plaintiffs waived all FLSA claims for the period stated on the Form WH-58 because there is no legally sufficient evidentiary basis upon which a reasonable jury could find otherwise. NOV provided evidence that shows that the DOL deemed its investigation a "full investigation" resulting in a waiver of Plaintiffs' claims under the FLSA.

GRANT: _____ DENY: _____

VII. *Representative Testimony*

Pursuant to Rule 50, NOV moves for judgment as a matter of law that the 7 representative Plaintiffs (Jorge Acosta, Jack Akin, Henry Bolton, Michael Favata, David Kelley, Michael Mallett, and Michael Schwab) are not representative of the other 48 Plaintiffs. Plaintiffs have provided legally insufficient evidence upon which a reasonable jury could find that the 7 representative Plaintiffs are similarly situated to the other 48 Plaintiffs.

GRANT: _____ DENY: _____

VIII. *Named Plaintiffs*

Pursuant to Rule 50, NOV moves for judgment as a matter of law that Plaintiffs have failed to put on evidence or testimony regarding the following named Plaintiffs: Jerry Jurach, Zach Hunter, and Josue Rameriz. Therefore, there is legally insufficient evidence for a jury to find that these named Plaintiffs have proven their claims.

GRANT: _____ DENY: _____

Dated: April 20, 2014

Respectfully submitted,

/s/ M. Carter Crow

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on April 20, 2014, upon the following counsel of record.

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s/ M. Carter Crow

M. Carter Crow